IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Bail Appl..No. 6472 of 2007()

CRMP.538/2007 of DISTRICT COURT, KASARAGOD
CRIME NO.160/07 OF RAJAPURAM POLICE STATION

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PETITIONERS/ACCUSED

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1. LIJO JOSEPH, S/O. JOSEPH,
   THONDIKKAL HOUSE, BALANTHODU P.O.,
   PANATHADY VILLAGE, HOSDURG TALUK,
   KASARAGOD DISTRICT.

2. LINCE JOSEPH, S/O. JOSEPH,
   THONDIKKAL HOUSE, BALANTHODU P.O.,
   PANATHADY VILLAGE, HOSDURG TALUK,
   KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING S.H.O.,
RAJAPURAM POLICE STATION.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6472 OF 2007

Dated this the 30th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 2 and 3. Altogether, there are three accused persons. The 1st accused is the sister of the petitioners. The 1st accused had got married the de facto complainant in November, 2006. She is employed in U.K. After marriage, she took the de facto complainant also to U.K. Acrimony developed in marriage. Both of them returned to their native place to attend the marriage of the brother of the 1st accused. After their return to India, accused 1 to 3 allegedly made fraudulent representations to induce the de facto complainant to part with his passport. He was induced to part with the passport on the promise that it can be kept in safe custody and the possibility of he losing it can be avoided. But after so getting the

passport, accused 1 to 3 fraudulently implemented their prior design of the 1st accuse leaving India without giving the passport to the de facto complainant. The original of his documents showing his educational qualification were also kept by the accused. The 1st accused has now left for his place of employment. Her husband – the de facto complainant is left in the lurch in India. He is unable to go abroad as his passport and other documents are taken away by the 1st accused. He is unable to seek employment in India because his certificates are also illegally retained by the accused persons. The complainant was thus in helpless circumstances. The accused persons promised him that all the documents shall be returned to him on condition that he files an application for divorce and obtain divorce. In his anxiety to get his documents returned, he filed an application for divorce also. Divorce has been ordered. In spite of that, his travel documents and certificates are not being returned. The de facto complainant now realises that he has been taken for a ride. In is, in these circumstances, that the de facto complainant filed a complaint before the learned Magistrate which was referred to the police by the learned Magistrate under Sec.156(3) of the Cr.P.C. The passport and the travel documents have still not been returned. This case

was adjourned for a number of days giving an opportunity to the parties to settle their disputes and to ensure that the travel documents are returned to the de facto complainant. No arrangement has been made so far, submits the learned Public Prosecutor.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. At worst, it is only a dispute between the 1st accused and the de facto complainant. In these circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials collected so far clearly indicate the complicity of the petitioners. Fraudulent deception of the de facto complainant is revealed from the totality of the materials available in this case, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is not a fit case where the powers under Sec.438 of the Cr.P.C. can or ought to be invoked. This evidently is a fit case where the petitioners must co-operate with the Investigator. They must surrender before the Investigating Officer or the

learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. Needless to say, if, as submitted by the learned Public Prosecutor, a fraudulent design to defraud the de facto complainant by the 1st accused is also available, the Investigator must take appropriate steps to get the passport of the 1st accused impounded and to ensure that necessary steps are taken expeditiously against the 1st accused also. The needful shall certainly be done by the Investigating Officer. The helpless plight of the de facto complainant does cause concern in my mind.

6. This application for anticipatory bail is, in these circumstances, dismissed. Communicate a copy of this order immediately to the Investigating Officer.

(R. BASANT, JUDGE)

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